

HANFT FRIDE
A PROFESSIONAL ASSOCIATION

DULUTH OFFICE:
1000 U.S. BANK PLACE
130 WEST SUPERIOR STREET
DULUTH, MINNESOTA 55802-2094
TELEPHONE: 218/722-4766
FAX: 218/529-2401

August 7, 2015

CLOQUET OFFICE:
1219 - 14TH STREET
CLOQUET, MINNESOTA 55720
TELEPHONE: 218/879-3333
FAX: 218/879-3201

☐ REPLY TO CLOQUET OFFICE

WWW.HANFTLAW.COM

Email: wmb@hanftlaw.com

GILBERT W. HARRIES*
WILLIAM M. BURNS
JOHN D. KELLY*
FREDERICK A. DUDDERAR, JR.
TIM A. STROM*
R. THOMAS TORGERTSON*
CHERYL M. PRINCE*
ROBIN C. MERRITT*
JENNIFER L. CAREY*
MARK D. PILON*
JACOB J. BAKER*
KENNETH A. KIMBER*
SCOTT A. WITTY*
DAVID L. TILDEN*
KIMBERLY E. BRZEZINSKI
LEAH L. FISHER
HOLLY LABOONE-HALLER

RICHARD R. BURNS*, OF COUNSEL
CHARLES H. ANDRESEN, OF COUNSEL
DAVID C. LINGREN, OF COUNSEL

*ALSO ADMITTED IN WISCONSIN

Via Hand Delivery and Email

Duluth City Council
City Clerk's Office
City Hall, Room 330
411 West 1st Street
Duluth, MN 55802

Re: Proposed Townhome Development/Special Use Permit Appeal
Mississippi Avenue and Lyons Street, Duluth MN
Our File No. 30899.000

Ladies and Gentlemen:

As you are aware, Hanft Fride, a Professional Association, has been retained by a number of the neighbors who have expressed concerns regarding the townhome development proposed for the intersection of Mississippi Avenue and Lyons Street. The leadership group relative to these neighbors consists of Al Makynen, Jim Starr and Jay Stoffel. This letter sets forth our position relative to the appeal presently before the Council.

This is an appeal of a Planning Commission decision of June 9, 2015, which granted a Special Use Permit (SUP) to allow the erection of a townhome project in a residential neighborhood which, under the UDC, is in an R-1 zone. The Planning Commission approved the development on split vote, originally a tie, which was broken to allow the matter to move forward and receive your review. In short, there was certainly not any ringing endorsement of the SUP by the Planning Commission.

Pursuant to UDC Section 50-37, the Planning Commission can approve, or approve with modifications, a SUP where the following criteria are met:

- The application is consistent with the Comprehensive Land Use Plan;
- The application complies with all applicable provisions of the applicable chapter of the UDC.

In making their decision, the Planning Commission found that the project met the density guidelines of the Comprehensive Plan and also comported with the Plan's Governing Principles. We respectfully disagree for several reasons. First, the proposed development has double the number of units set forth under the Comprehensive Plans and Density guidelines. Second, a careful examination of the Guiding Principles compels overturning the Planning Commission's decision. Finally, there are additional practical concerns raised by neighboring homeowners which were not adequately addressed by the Planning Commission.

The Planning Commission correctly noted that the SUP at issue was to be based in a "traditional neighborhood" or R-1, Residential-Traditional. The Comprehensive Plan has a density guideline for these neighborhoods of 4-8 units per one acre area. The area in which the proposed development is to be located is approximately .57 acres. Given that the proposed site is apparently ½ acre, the Comprehensive Plan's density guideline would allow for a townhome development of approximately 2-4 units for the proposed project site.

The development proposal, however, contains 8 units, totaling 23 bedrooms. On its face, this is almost double the amount of units recommended under the density guidelines of the Comprehensive Plan. The Planning Commission avoided this result by using an aggregate approach to density calculation. Rather than look at the ½ acre individually, the Commission lumped the entire block together for purposes of calculation. Specifically, they found that there are currently 10 homes on 3 acres. The project would increase this ratio to 18 homes on 3½ acres. Using this methodology, the project would be in line with the density guidelines.

This form of density calculation appears arbitrary and has significant policy implications. First and foremost, it essentially deprives neighboring landowners of their property rights. As a hypothetical, assume there are two vacant 1-acre lots sitting next to one another in an R-1 zoned block. Lot One applies for and obtains a SUP for a 16 unit townhome development on its 1 acre. Using the aggregate methodology applied by the Commission, this is within the density guidelines set forth in the Comprehensive Plan. Looking at the big picture, such a grant is invasive of the rights of the adjacent lot, call it Lot Two. As we see it, this situation is such that the property rights of Lot Two to develop are impacted due to Lot One "filling up" the density quota.

The precedent that would be set by approval of this high density within the neighborhood is extremely troubling as it directly impacts landowner rights and can only lead to further disputes in the future. It seems the more "practical" application of the density guideline would be to take the 4-8 units per acre on its face. In the present case, that would suggest a development with 2-4 units on the .57 acre site.

The Commission also relied on Guiding Principle No. 8, which supports a mix of land uses within existing zones. Principle No. 8, however, recognizes that within this Principle lies the need for "balance." The area in question is a traditional neighborhood in an R-1 zone. While, there is room for some multi-unit housing in an R-1 zone, the question is a matter of scale and while denominated as a "townhome development," it is noted that some Planning Commission members referred to the development as an "apartment building." It has many more characteristics of an apartment building than a townhome development. The question here is a matter of scale and as a practical matter this appeal would not be before the Council with our representation were the proposed development in line with the Comprehensive Plan. A development approximately half the size of the one proposed would be much more in line with the existing neighborhood density and character, and would strike a "fair balance" between multi-unit housing and single family homes.

In examining the Guiding Principles, the Commission noticeably neglected Principle No. 5, strengthen neighborhoods, a part of which provides an admonition against dividing historic neighborhood patterns with new development. Again, the issue comes down to one of balance. A development more in line with existing density guidelines would be much less divisive.

The Commission also failed to examine Principle No. 10, which urges the Commission to take sustainable action. Here, a development approximately double the size of applicable density guidelines cannot help but significantly impact sustainability. This includes trash generation, vehicle traffic, water runoff and erosion issues.

It is also worth noting that, while the neighborhood in question lies near the border of the Higher Education Overlay, which is a part of the Comprehensive Plan, this neighborhood is entirely on the residential side of the zone. The Commission incorrectly asserts that "the property is within the Higher Education Overlay." Even assuming this claim is correct (which it is not), the Commission also found that as a result, the project requires a build to zone of 5 to 20 feet along primary streets. The Commission stated this provision was inapplicable as neither Mississippi nor Lyons are defined as primary streets. This is an important point. Both of the streets are quiet residential thoroughfares with limited traffic, which adds to the unique character of the neighborhood. Indeed, Lyons Street has very minimal traffic as it is a dead end with a vacated paper roadway at its terminus. The characters of the neighborhoods to either side of this boundary are distinct, unique and special in their own ways. Striking a "balance" requires limiting unchecked expansion into historic residential neighborhoods.

I note that our clients and a number of neighbors plan to attend and be heard at this hearing. It is my understanding that they will convey additional factual concerns to the Council, including, but not limited to:

1. That the proposed development will use a lease by bedroom rather than lease by unit;
2. That engineering concerns and exterior architectural issues have yet to be resolved;
3. That increased vehicular traffic may result in danger to motorists and pedestrians in inclement weather;
4. Other concerns unique to individual neighboring landowners.

Based upon the foregoing, we would ask that the Council overturn the decision of the Planning

Commission to approve the SUP at issue. I look forward to being able to address this matter with you on August 10, 2015. Thank you for your time and consideration on this matter.

Very truly yours,



William M. Burns

WMB/dar